

# OFFICIAL GAZETTE



## GOVERNMENT OF GOA

### SUPPLEMENT

#### GOVERNMENT OF GOA

Department of Labour

##### Notification

No. 28/1/2003-LAB-Part

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 28-10-2003 in reference No. IT/73/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 9th December, 2003.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. Case No. IT/73/2002

Smt. Sabina D'Souza,  
Fondacwado,  
Parra, Bardez-Goa.

— Workman/Party I

V/s.

M/s. Rotoflex Filmpack  
Industries, D-2/15,  
Tivim Industrial Estate,  
Karaswada, Mapusa Goa.

— Employer/Party II

Workman/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Adv. Shri P. J. Kamat.

Panaji, dated: 28-10-2003.

#### AWARD

In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12-11-2002 bearing No. 28/50/2002-LAB referred the following dispute for adjudication of this Tribunal.

- Whether the action of the management of M/s. Rotoflex Filmpack Industries, Thivim Industrial Estate, Karaswada, Mapusa Goa, in terminating the services of Smt. Sabina D'Souza, Clerk, with effect from 20-8-2001, is legal and justified?
- If not, what relief the workman is entitled to?

2. On receipt of the reference a case was registered under No. IT/73/2002 and registered A. D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party-I (for short 'workman') filed her statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that she was employed with the Employer/Party-II (for short 'employer') as a regular worker from 5-7-1989. That for no reason she was orally threatened and her services were terminated on 18-8-2001 because she had refused to submit her resignation letter. That she is coming from a poor family and she has to look after her school going children. The workman claimed that termination of her services is illegal and unjustified and therefore she is entitled to reinstatement in service with all back wages.

3. The employer filed written statement at Exb. - 5. The employer denied that the services of the workman were terminated. The employer stated that the workman was employed as a clerk from 5-7-1989 and was entrusted with the work of clerical nature. The employer stated that the workman was required to send daily information in the prescribed format through E-mail to the office of the employer at Mumbai but she suddenly refused to do the said work from around June/July 2001 thereby disobeying the reasonable orders of the superiors. The

employer stated that on 26-7-2001 at about 9.00 a. m. the workman was instructed to write the cash vouchers relating to the manufacturing expense account and when at about 9.30 a.m. the Proprietor went to collect the said vouchers from the workman he found that the work was not done. The employer stated that when the Proprietor again instructed the workman to do the work immediately she refused to do so and thereafter remained absent from 27-7-2001 to 7-8-2001 till 1.00 p.m. The employer stated that on 10-8-2001 the workman was issued a show cause notice for the acts of misconduct committed by her before remaining absent from 27-7-2001 and the workman filed her explanation dated 14-8-2001. The employer stated that thereafter the workman was issued a chargesheet dated 15-10-01. The employer stated that on or about 24-8-2001 the workman sent a letter dated 21-8-2001 making false and wild allegations against the Proprietor of the employer when infact she had deserted the work. The employer stated that the chargesheet which was sent to the workman by registered A. D. post was returned unserved with the remark 'unclaimed' and thereafter the employer received a notice from the Asst. Labour Commissioner, Mapusa alleging refusal of employment to the workman w. e. f. 20-8-2001. The employer stated that the Asst. Labour Commissioner was informed by letter dated 14-1-2002 that the services of the workman were not terminated but she remained absent from 20-8-2001 and the Asst. Labour Commissioner, Mapusa was asked to direct the workman to report for work immediately without any delay. The employer stated that inspite of the offer given the workman did not report for work and continued to remain absent. The employer denied that the services of the workman were terminated or she was refused employment. The employer denied that the workman is entitled to any relief as claimed by her. The workman thereafter filed rejoinder at Exb. - 6. On the pleadings of the parties issues were framed at Exb. - 7. At this stage the parties submitted that they are trying to arrive at an amicable settlement and at their request the case was fixed on 17-10-2003 for filing the terms of the settlement. Accordingly on this date the parties appeared and they submitted that the dispute between them is amicably settled. The parties filed the terms of settlement dated 17-10-2003 at Exb. - 8. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement dated 17-10-2003 Exb. - 8 and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 17-10-03 Exb. - 8.

## ORDER

1. It is agreed between the parties that the employer shall pay an amount of Rs. 20,000/- (Rupees twenty thousand only) to Mrs. Sabina D'Souza in full and final settlement of all her dues including Gratuity etc.
2. It is agreed between the parties that Mrs. Sabina D'Souza has been properly relieved from the services w. e. f. 28-8-2001.

3. It is agreed and declared that the amount payable by the employer to Mrs. Sabina D'Souza in the manner hereinabove provided for is in full and final settlement and satisfaction of all her claims against the employer including claim for compensation for loss of office or otherwise whatsoever.
4. It is agreed between the parties that the amount payable as per clause (1) above shall be paid in two equal instalments namely Rs. 10,000/- on 15-11-2003 and balance Rs. 10,000/- on 15-2-2004 by post dated cheques.

No order as to cost.

Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

## Notification

No. 28/1/2003 - LAB -Part/4428

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 2-12-2003 in reference No. IT/42/95 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 22nd December, 2003.

## IN THE INDUSTRIAL TRIBUNAL

## GOVERNMENT OF GOA

## AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. Case No. IT/42/95

Workmen rep. by the President,  
Goa Municipal Workers' Union,  
5- Municipal Building,  
Kamgar Karyalay,  
St. Inez, Panaji-Goa  
V/s.

— Workmen/Party I

The President,  
Curchorem Cacora Municipal  
Council  
Curchorem-Goa.

— Employer/Party II

Union/Party I - Represented by Shri Gurudas Naik.

Employer/Party II - Represented by Adv. Shri M. P. Fernandes

Panaji, dated: 2-12-2003.

AWARD

In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 5-9-95 bearing No. 28/31/93-LAB referred the following dispute for adjudication of this Tribunal.

1. "Whether the action of the Curchorem Cacora Municipal Council in refusing to concede the following demands of the workmen represented by the Goa Municipal Workers' Union is legal and justified?

DEMAND No. 1: Permanency and payscale with all Allowances recommended by IV Pay Commission

We demand that all the employees/workmen of the erstwhile Curchorem and Cacora Village Panchayat and subsequently absorbed as workmen/employees by the Curchorem-Cacora Municipal Council and who are on Pay Roll/Muster Roll of your Council as on 11-11-1991 should be made permanent and they should be given Pay scales and all other allowances/benefits as recommended by the Fourth Pay Commission as adopted by other Municipalities. The difference between the present pay and the pay scales and other allowances as recommended by the IV Pay Commission should be paid to all the workmen/employees forthwith. The arrears accruing out of demand No. 1 i.e., differences between pay scales of III Pay Commission and IV Pay Commission out of which 10% be deducted of each workman/employees and remitted to the Goa Municipal Workers Union by way of demand draft.

DEMAND No. 2: Consideration of services rendered to Panchayat:

We demand that the post services rendered by the workmen/employees to the respective village Panchayat should be taken into consideration by the Council for the purpose of fixation of pay scales, seniority and all other benefits such as earned leave, sick leave, Time Bound Promotional Scale, etc.

DEMAND No. 3: Benefits and Privileges:

We demand that all types of allowances including D. A., H.R.A., and other allowances as admissible to the employees of Government of Goa should be made applicable to the workmen/employees of Curchorem-Cacora Municipal Council with effect from constitution of the Council, as adopted by other Municipalities.

DEMAND No. 4: Leave facilities:

We demand that facilities of leave including Earned leave, Casual leave, sick leave and leave encashment, etc., and all other benefits pertaining to leave should be made applicable to the workmen/employees of Curchorem-Cacora Municipal Council as declared by the Government from time to time and as made applicable to other Municipalities.

DEMAND No. 5: Festival/Paid Holidays:

We demand that all festival/paid holidays which are enjoyed by the employees of the other Municipal Councils should be made applicable to the employees of the Curchorem-Cacora Municipal Council.

DEMAND No. 6: Demand of Office Staff:

We demand that in respect of leave, pension, retirement benefits, superannuation and other allowances including Provident Fund and other service conditions, as far as they relate to the office staff of the Council should be the same as that of the employees of Government of Goa and should be made applicable to from time to time.

DEMAND No. 7: Garbage allowance:

We demand that all the workmen/employees who are working on Garbage vans/trucks/cars and all the workmen/employees engaged for garbage collection should be paid Rs. 2/- per working day as garbage allowance.

DEMAND No. 8: Free Medical Aid:

We demand that any Municipal workmen/employees who are suffering from T. B. should be given free medical aid and he/she shall be granted special leave with pay for period upto six months in addition of his/her sick leave, earned leave, etc.

DEMAND No. 9: Overtime:

We demand that any workmen/employees other than office staff who is required to work for more than normal working hours should be paid overtime at thrice the rate of normal wages for extra hours of work. If any employee/workmen is required to work on Public Holiday, he/she should be paid his normal wages and plus two days extra wage for work on such holiday.

DEMAND No. 10: Uniforms & Footwear:

- (a) We demand that all the field staff including peon in the office should be supplied with two khaki terricoat uniforms and two pairs of footwears every year on or before 2nd October, and they should be supplied with one duck-back raincoat on or before 1st May of every year. For all male field workmen two shirts and two half pants in khaki terricoats and two pairs of chapels should be provided.

- (b) We demand that all female workmen be supplied with two khaki terricoat saris and two khaki terricoat blouses with two pairs of chapels.
- (c) We demand two terricoat coats with two khaki terricoat long pants and one leather belt with Municipal monogram on the buckle, two caps and two pairs of leather shoes for watchmen.
- (d) We demand that Municipal Inspectors, Assistant Municipal Inspectors, Market Inspectors, Senior Supervisor, Site supervisor, Street Light supervisor, supervisors, Drivers, Garden supervisors, Kukadams, Road Roller Drivers, Mechanics, Assistant Mechanics, Peon, Electricians, Assistant Electricians, Pipe Fitters, Plumbers, Painters, Peons, Tax Collectors, Linemen be provided with two khaki terricoat shirts, two khaki terricoat long pants, two pairs of shoes on or before 2nd October of every year.
- (e) We demand that all male as well as female workers performing outdoor duties should be supplied with one duck-back raincoat on or before 1st of May every year. This demand is effective from 1st.
- (f) We demand that all the employees/workmen who are entitled for uniforms should be paid washing allowances at the rate of Rs. 20/- per month with effect from 1991.

**DEMAND No. 11: Payment of gratuity to workmen:**

We demand that all the workmen other than office staff should be paid gratuity at the rate of 22 days for every completed year of service. For the purpose of calculation of gratuity, basic pay and D. A. shall be taken into consideration at the time of retirement as followed by other Municipal Councils.

**DEMAND No. 12: Intimation of date of retirement well in advance:**

We demand that every workman/employee should be given in writing, with a copy to the Goa Municipal Workers' Union, one year in advance the date of their retirement/superannuation.

**DEMAND No. 13: Leave Encashment:**

We demand that leave encashment facility be extended to all workmen/employees on par with Government employees.

**DEMAND No. 14: Sick Leave and Earned Leave:**

We demand that sick leave and earned leave should be allowed to be accumulated as in the case of government employees.

**DEMAND No. 15: Uniforms to Daily Rated Workmen**

We demand that all the daily rated workmen should be supplied with uniforms and they should be given washing allowance at the rate of Rs. 20/- per month and footwears and rainwears.

**DEMAND No. 16: Benefits/Privileges:**

We demand that all the benefits/privileges given to the government staff be made applicable to the workmen/employees as per circulars issued by the Goa Government from time to time.

**DEMAND No. 17: H. R. A., D. A.**

We demand that the House Rent Allowance and D. A. be paid to the workmen/employees as per Government circulars issued from time to time.

**DEMAND No. 18: Employment to Dependants:**

We demand that employment be given to the dependants of employees who are deceased/ /incapacitated/die while in service while filling up any posts in the Council provided they fulfil the requirements of recruitment rules. The dependants for the purpose of this demand shall mean and include the dependants as specified in Annexure-I

**DEFINITION OF THE DEPENDENT**

- (1) Wife or wives in the case of male workmen/ /employees.
- (2) Husband in the case of female workmen/ /employees.
- (3) Sons including step-sons and legally adopted sons.
- (4) Unmarried daughter including step-daughters and legally adopted daughters.
- (5) Widowed daughters including step-daughters and legally adopted daughters.
- (6) Brother including step-brother who is unemployed.
- (7) Unmarried sisters and widowed sisters including step-sisters.
- (8) Daughter-in-laws.

**DEMAND No. 19: Appointment of Dependants within 90 days:**

We demand that the dependent of the workmen/ /employees who have died while in service should be appointed on a suitable post in the council within 90 days from the occurrence of death after fulfilling the required procedure of recruitment. The same procedure should be made applicable to the dependent of incapacitated workmen/ /employees.

**DEMAND No. 20: Medical Allowance:**

We demand that a fixed medical allowance of Rs. 100/- per month be given to all workmen/ /employees.

**DEMAND No. 21: Free Medical Treatment:**

We demand that in case of major sickness such as Cancer, heart disease, leprosy, peptic ulcer, etc., free medical treatment should be given when the same is not available in Government Hospital.

**DEMAND No. 22: Regularisation of Services:**

We demand that all the employees/workmen who have rendered/put in minimum of 180 days of service should be regularized from the date of completion of 180 days and all facilities be given on par with permanent workmen/employees.

**DEMAND No. 23: Confirmation Letters:**

We demand that all the workmen/employees who are on the pay roll of the Council on the day of signing of this Agreement be given a letter of confirmation within one month from the date of signing of this Agreement.

**DEMAND No. 24: Retiring Age:**

We demand that the retiring age of office staff should be 58 years and that of field staff should be 60 years.

**DEMAND No. 25: Benefits to S. C./S. T./O. B. C. Categories:**

We demand that all the circulars issued by the Government from time to time be implemented for the benefits of workmen/employees belonging to S. C./S. T./O.B. C. categories.

**DEMAND No. 26: Identity Cards:**

We demand that laminated identity cards be provided to all the employees/workmen at the cost of the Council and actual cost be recovered from the workmen/employees for issuing a duplicate in case the original is lost

**DEMAND No. 27: Terminal dues:**

We demand that all the workmen/employees should be paid terminal dues on the day of the retirement with a statement of dues furnished to the retiring workmen/employees 30 days before the date of retirement with a copy furnished to the Goa Municipal Workers' Union and in case of death, accident, incapacitation from services, such dues should be paid within one month from the date of occurrence of the event and a copy of statement of terminal dues should be sent to the Goa Municipal Workers' Union.

**DEMAND No. 28: Contributory Provident Fund Scheme:**

We demand that all the field workmen other than office staff who are not covered under the C. P. F. Scheme should be brought under C. P. F. Scheme and rate of contribution and interest shall be the same as declared by the Government under the Employees Provident Fund (Miscellaneous Provisions) Act, 1952 from time to time. This Scheme will come into effect from the date of signing of the agreement.

**DEMAND No. 29: Demand for Five Days Week:**

We demand introduction of Five Days week to all the employees working in the office of Curchorem-Cacora Municipal Council.

If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/42/95 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Union/Party I (for short, "Union") filed its statement of claim at Exb. 4. The facts of the case in brief as pleaded by the Union are that by letter dated 25th November, 1991 the Union raised charter of demands against the Employer-Party II (for short, "employer"). That due to the indifferent attitude taken by the employer the dispute on the demands remained unresolved. That the conciliation proceedings held by the conciliation officer ended in failure because the employer did not participate in the said conciliation proceedings. The Union stated that the demands raised against the employer vide letter dated 25th November, 1991 are legal and justified and most of the Municipalities have conceded to the similar demands raised by the other Municipal workers.

3. The employer filed written statement at Exb. 8. The employer stated that most of the demands are either settled or are under consideration and waiting for its approval from the concerned authority. The employer denied that the proceedings before the conciliation officer were boycotted by them.

4. On the pleadings of the parties following issues were framed at Exb. 9.

1. Whether the Party I proves that their demands are legal and justified?
2. Whether the action of the Party II in refusing to concede the demands of the Party I is illegal and unjustified?
3. What relief?
4. What Award?

**5. My findings on the issues are as follows:**

Issue No. 1: In the affirmative as regards the demand No. 2. The demand No. 1 and 3 to 29 do not survive in view of the settlement.

Issue No. 2: In the negative as regards the demand No. 2.

Issue No. 3: As per para 15 below.

Issue No. 4: As per order below.

**REASONS**

6. Issue No. 1 and 2: Both these issues are taken up together because they are interrelated. The dispute which has been referred by the Government is as regards the demands raised by the union against the employer. The Union had raised 29 demands against

the employer vide letter dated 25th November, 1991 as reproduced in the order of reference. After the issues were framed, the evidence of the union was recorded and thereafter the case was fixed for recording the evidence of the employer. At the stage where the evidence of the employer was partly recorded the parties submitted that the dispute is likely to be settled and at their request the case was fixed for filing the terms of the settlement. On 11-2-2002 the union and the employer filed an application dated 14-1-2002 at Exb. 15 stating that all the demands except the demand No. 2 have been settled between the parties and therefore only the demand No. 2 be adjudicated and the necessary Award be passed. The parties did not file the terms of settlement in respect of the demands which were settled. Since the demand No. 2 was not settled, the case was proceeded with and the evidence of the parties was completed. In the circumstances the findings in the present case are restricted to the demand No. 2 raised by the union in the charter of demands.

7. The demand No. 2 of the Union is that the past service rendered by the workmen/employees to the respective village panchayats should be taken into consideration by the Curchorem Cacora Municipal Council for the purpose of fixation of pay scales, seniority and all other benefits such as earned leave, sick leave, time bound promotion scale etc. Both the parties have filed their written submissions. The union has submitted that the witnesses Shri Umesh Shankar Naik and Shri Ganesh Raju Naik are the persons who were working in Curchorem Panchayat and they were transferred to Curchorem-Cacora Municipal Council after its formation, and they have stated that their services continued with Curchorem-Cacora Municipal Council without any break in service. The Union has submitted that the witness Shri Abdul Gaffar Khan was working with Valpoi Village Panchayat and he has stated that when the said Panchayat was converted into Valpoi Municipal Council on 7-6-89 he started working with the said council and that his service is pensionable and his past service record is considered for the purpose of all benefits enjoyed by the employees of the said Council. The union has submitted that the order produced at Exb. W-6 supports the above contention of the said witness. The union has submitted that the employer's witness, Chairman Shri Deu Naik, has not given any reason as to why the demand No. 2 of the Union is not legal and justified except that past service records of the employees are not available and that there is no provision in the Municipality Act for considering the past services rendered by an employee in the Panchayat. The union has submitted that as per the notification dated 20-5-1988 issued by the Government of Goa under Sec. 325 (2) (vii) of the Municipality Act declaring Curchorem and Cacora Village Panchayats as Curchorem-Cacora Municipal Council it is clear that the employees of the Panchayats were not employed afresh but they were re-employed on transfer on same terms and conditions and that

their pays were protected and they were paid the salary which they were drawing in Panchayats. The union has submitted that if services of an employee is continuous even on re-employment by the council on declaration of Panchayat as a Municipal area, then he is eligible for benefits to which the regular employee is entitled. The Union has relied upon the judgment of the Delhi High Court in the case of Punjab and Sind Bank v/s Ashok K. Agarwal reported in 2000 1 LLJ 447 in support of its above contention. The Union has submitted that Sec. 77(f) and (i) of the Municipality Act empowers the municipal council to consider the demand no. 2 of the union. The Union has submitted that the pension rules provide for counting the temporary as well as permanent service for the purpose of grant of pension as in the case of gratuity.

8. The employer on the other hand has submitted that the union has not produced any evidence to show that they were the permanent employees of village panchayat of Cacora nor they have shown any provision or condition which states that the services of the workmen should be continued with the Municipality. The employer has submitted that merely because the other Municipality has given various facilities to their employees it does not mean that the employer should follow the same when the same is not applicable to the employer Municipality. The employer has submitted that the Union's witness Shri Abdul Gaffar Khan has stated in his cross examination that his past service conditions were counted by the Valpoi Municipal council based on the appointment letter issued to him by the Valpoi Village Panchayat and he was the permanent employee of the said Panchayat and therefore his case cannot be applied to the present case. The employer has submitted that its witness the Chairman, Shri Deu Naik has stated that the Curchorem-Cacora Municipality has no record to show that workmen of the Village Panchayat of Cacora are the permanent employees and that there is no provision in the Municipality Act for considering the services rendered by an employee of the panchayat should be considered. The employer has admitted the notification dated 20-5-1988 issued by the Government and has stated that as regards the demand of the union for counting the service rendered in the Panchayat it was not considered because of want of proof of appointment. The employer has therefore submitted that the demand No. 2 of the union is liable to be rejected.

9. The union has examined four witnesses namely Shri Chimanrao Mane, Shri Umesh Naik, Shri Ganesh Naik, and Shri Abdul Khan. Shri Mane is the General Secretary of Municipal Workers' Union; Shri Umesh Naik and Shri Ganesh Naik are working with the employer Curchorem Cacora Municipal Council and Shri Abdul Khan is working with Valpoi Municipal Council as Supervisor. The employer Municipal Council has examined one witness namely Shri Deu Naik who is the chairman of the said council. Shri Mane, the General Secretary of the Union has stated that the Union signed settlements with different Municipalities in respect of the demands submitted by the Union in the year 1991.

He has produced the said settlements at Exb. W-4 colly. He has also produced the letter dated 11-4-89 at Exb. W-5 written by Director of Municipal Administration to the Chief Officer of the employer Municipal Council on the issue of absorption of Panchayat Staff into the employer Municipal Council. In his cross examination he stated that he is not aware whether any appointment letters were given to the workers/employees by the Village Panchayat of Cacora. He denied that as per provisions of the Municipalities Act, the service period of the employees while working with the Village panchayat of Cacora cannot be counted. He also denied that at the time of the formation of employer Municipal Council all the dues of the employees working with the village panchayat of Cacora were settled. The witness Shri Umesh Naik has stated that earlier since the year 1971 he was working with Curchorem Municipal Council as a clerk which was abolished and made as Curchorem-Cacora Municipal Council in May, 1988 and that presently he is working there as site supervisor. He has stated that all the employees who were working in the Curchorem Panchayat were taken in Curchorem-Cacora Municipal Council, that is, the employer in the present case. He has given the names of the employees who were working in the Curchorem Panchayat. He has stated that when they were absorbed in employer Municipality they were paid wages according to 3<sup>rd</sup> Pay Commission whereas the employees working in other Municipalities were paid as per the recommendation of 4<sup>th</sup> Pay Commission and that on representation made a settlement was signed in the year 1985 and as per the said settlement they were paid arrears and are being paid wages as paid to the employees of other Municipality. He has stated that each one of them had put in minimum 10 to 12 years of service in Panchayat. He has stated that when they were absorbed in employer Municipality their past period of service was not considered at the time of fixation of pay nor seniority was considered nor they were given benefit of sick leave, earned leave and time bound promotion. In his cross examination he stated that he was issued appointment letter by the Panchayat but he does not have the same now. He denied that he was not in permanent employment of the Panchayat. He denied that he and the other employees of the Panchayat who were absorbed were freshly appointed in the employer Municipality or that all their dues paid when they were absorbed in the Municipality, by the respective Panchayats. He denied the suggestion that each one of them had not put in minimum 10 to 12 years of service in Panchayat. He denied that they were absorbed in the Municipality on condition that they will not be paid their past dues and they accepted the said condition. He admitted that in the settlements produced there is no reference to the demand of service counting. He denied the suggestion that at the time of fixation of pay it was not necessary to consider their past period of

service nor the seniority. The witness shri Ganesh Naik stated that he was working with Curchorem Village Panchayat since 1988 and that presently he is working with the employer Municipality as a Mukadam. He has stated that in the year 1988 Curchorem Village Panchayat and Cacora Village Panchayat were dissolved and the employer Municipal Council was formed, and his services were continued. He stated that the employer Municipality did not consider his past service at the time when his wages were fixed while working with the employer Municipality nor he was given the benefits of earned leave, sick leave and time bound promotion. He stated that Canacona Municipal Council and Valpoi Municipal Council considered the past service records of the employees who had rendered service in respective Panchayats before formation of the Municipality. In his cross examination he stated that he was issued appointment letter by the Panchayat but no separate appointment letter was issued to him by the employer Municipality. He denied the suggestion that his dues were paid by the Panchayat when it was dissolved. He denied the suggestion that he and other Panchayat employees were taken in employment afresh. He denied the suggestion that the employer Municipality does not have the past service record of the employees when they were working in Panchayat. The witness Shri Abdul Gafur Khan has stated that he is working in Valpoi Municipal Council as a supervisor since 7-6-89 and prior to that from 1-6-80 he was working in Valpoi Panchayat. He has stated that Valpoi Panchayat was converted into Municipality from 7-6-1989 and he was paid salary as paid to the other employees of the Municipality. He produced the order dated 18-11-92 Exb. W-6 issued by the Valpoi Municipal Council stating that his service is pensionable. He has stated that one Mr. Laxman Karekar and Vishnu Gawas were also working in Valpoi Village Panchayat and from 7-6-89 they were taken in Valpoi Municipality and their past service is counted for pensionary benefits. He has stated that he along with the other Municipal employees is getting the benefits of the settlement dated 10-4-91 entered between Valpoi Municipal Council and Goa Municipal Workers Union. In his cross examination he stated that he, Mr. Laxman Karekar and Mr. Vishnu Gawas were the permanent employees of the Panchayat and that his pensionary benefits are counted on the basis of the letter of appointment issued to him. He stated that when they started working in the Valpoi Municipality they were getting the same old pay as was paid to them by the Panchayat but when the new pay scale was given to them they were paid the difference in salary. He stated that at the time when their past service was counted, consent of the Director of Municipal Administration was taken.



10. The employer's witness Shri Deu Naik, the Chairman of the employer Municipal Council has stated that all the demands of the union have been settled except the demand No. 2. He has submitted that the employer does not have the records to show that the workmen were working with Curchorem-Cacora Village Panchayat and that for this reason the demand No. 2 raised by the union was not considered. He has stated that there is no provision in the Municipality Act for considering the services rendered by an employee in the Panchayat. In his cross examination he denied that the records showing that the workmen were working in the Panchayat are available with the employer.

11. As mentioned earlier the demand No. 2 of the union is for considering the past service rendered by the workmen in their respective Panchayats for various benefits like fixation of pay scale, seniority, earned leave, sick leave, time bound promotional scale etc. In the written submissions filed by the employer one of the objections to the said demand of the union that has been taken is that no evidence has been produced by the union to prove that the workmen were the permanent employees of the respective village Panchayats, and therefore they are not entitled to the demand No. 2 raised by them. The employer had filed their written statement. No pleading to this effect was made by the employer in the written statement with reference to the demand No. 2 it was only stated that the matter is pending before the director of Municipality and therefore the employer was unable to take the decision. No suggestion in this respect was put to Shri Mane, the General Secretary of the Union, nor to the witnesses Shri Ganesh Naik and Umesh Naik. The only suggestion which was put to the witness Shri Umesh Naik was that he was not the permanent employee of the Panchayat. In the circumstances the above contention of the employer is liable to be rejected outright. Even otherwise nothing has been brought on record by the employer to prove that only the permanent employees could make a claim for consideration of their past service for the purpose of the benefits mentioned in the demand No. 2. The provisions of the Gratuity Act of the Pension rules do not state that the benefits under the said Act and Rules can be extended only to Permanent employees. I therefore hold that there is no substance in the above contention of the employer. The employer has also taken contradictory stand. In the written statement the employer did not dispute that the workmen were earlier working with Curchorem-Cacora panchayats. The employer's witness Shri Deu Naik, the chairman of the employer Municipal Council, for the first time stated in his deposition that the employer does not have any records to show that the workmen were working with Curchorem-Cacora panchayats, and that on this account the demand No. 2 of the union was not considered. The above statement of the witness Shri Deu Naik has no relevance as it is contrary to the pleadings made in the written statement as well as admissions made in the evidence of the union. Nowhere in the written statement the employer disputed that the workmen on

whose behalf the demands were made by the Union were working with the Curchorem-Cacora-Panchayats. The demands of the workmen were not rejected by the employer on the ground that the workmen were not working in their respective Panchayats. On the contrary, the employer in the evidence of the union has admitted that the workmen were working in the Panchayats prior to the formation of the employer Municipal council. The Union's witness Shri Umesh Naik in his deposition has stated that when he was working in Curchorem Panchayat, alongwith him one Shri Vasudev Chodnekar was working as a Tax Collector, Shri Ganesh Naik was working as Supervisor, Shri Sudha Naik was working as LDC; Shri Ramnath Zamuni was working as Peon; Shri Krishna was working as labourer; Shri Shivappa Zumani, Shri Shamrao Chowgule, Shri Ganapati Chowgule, Indubai Sable were working as Sweepers; Shri Nunoso Naik was working as Gardener; Parvati Kndaikar was working as Scavenger; Gomati Naik was working as Worker and Yamuna Talwar was working as Sweeper. He has further stated that in Cacora panchayat Pandharinath Sawant was working as Peon. He has stated that all the above employees were taken for employment in Curchorem-Cacora Municipal Council. In his cross examination it was suggested to him that all the above employees were freshly appointed by the employer Municipality when they were absorbed by the employer Municipality and that all their dues were settled by their respective Panchayat. Thus in view of the above suggestion put to the witness it can be seen that the employer has admitted that the workmen on whose behalf the demands are raised by the union were working in the Curchorem-Cacora Panchayats prior to their absorption in the employer Municipality. Besides, the Union has also produced a letter dated 11th April, 1989 Exb. W-5 written by the Additional Director of Municipal Administration to the Chief Officer of the employer Municipal Council. In this letter the names of the persons who were the Panchayat staff and who were absorbed in the posts in the employer Municipal Council have been mentioned. In these names the names of the witnesses Shri Ganesh Naik and Umesh Naik are also included. The said letter refers to the report of the special committee which was sent to the Directorate of Municipal Administration along with letter of the employer Municipality dated 2-3-89 on the issue of absorption of Panchayat staff into Curchorem Cacora Municipality. This shows that the employer Municipality had the records regarding the workmen working in the Curchorem-Cacora panchayats. The evidence discussed above shows that there is no substance in the statement of the employer's witness, Shri Deu Naik that the demand No. 2 of the workmen was not considered because the employer Municipality did not have the records to show that the workmen were working with the Curchorem-Cacora panchayats. It was suggested to the Union's witness Shri Mane in his cross examination that the employer Municipal Council was not in a financial position to settle the demands of the workmen and therefore the demands were not settled. At another stage it was suggested



that as per the provisions of the Municipalities Act, the service period of the employees while working with the Village Panchayat cannot be counted. All the above facts go to show that the employer is not consistent in its defence. Different stand is taken by the employer at different times.

12. The evidence discussed above establishes that fact that after the formation of Curchorem-Cacora Municipal Council the workmen who were working in the Panchayats Curchorem and Cacora were absorbed in the above Municipal Council. The union's witness Shri Ganesh Naik has stated in his cross examination that no separate appointment letter was issued by the employer Municipal Council but they continued to work with the Council after the dissolution of the Panchayats and formation of the employer Municipal Council. He denied the suggestion that he and the other employees were taken in employment by the employer Municipal Council afresh. If according to the employer the employees working in the Panchayats were taken in employment afresh, the employer ought to have produced evidence in support of the same, except for putting the suggestion, no evidence has been produced by the employer in this respect. Therefore, there is absolutely no evidence from the employer to prove that the employees working in the Panchayats were taken in employment afresh after formation of employer Municipal Council. On the contrary the union along with the written arguments submitted by it has produced the Notification dated 20-5-1988 bearing No. 3-52/83-LAWD (Curchorem Cacora)-16 issued by the Department of Urban Development. In the additional written arguments filed by the employer, the above Notification issued by the Government has been admitted by the employer. The said Notification is a public document. The said Notification states that by Notification dated 20-5-1988 issued under Sec. 3 (1) of the Goa, Daman and Diu Municipalities Act, 1968 (Act 7 of 1969) the Government of Goa has declared the Curchorem and Cacora Village Panchayats as Curchorem-Cacora Municipal areas. Clause 3 of the said Notification states that in terms of section 325 (2) of the said Act, the Government re-employs the employees of the Village Panchayats of Curchorem and Cacora on the same terms and conditions as were applicable to them prior to their transfer to the Curchorem-Cacora Municipal Council. This shows that the services of employees/workmen of the Village Panchayats of Curchorem and Cacora were not terminated by the Government nor they were employed afresh by the employer Municipal Council but their services were continued with the employer Municipal council on the same terms and conditions which were applicable to them when they were working with the Panchayats. As per Section 325(2) of the Municipalities Act, 1988 the Government was empowered to terminate the services of the workmen when Municipal Area was created, but the Government did not do so. Thus there was no break in service of the workmen when the employer Municipal Council came into existence in place of Curchorem and

Cacora Panchayats. Therefore in my view the period of service rendered by the workmen while working in the Panchayats is liable to be counted/considered. The union has relied upon the judgment of the Delhi High Court in the case of Punjab and Sind Bank v/s Ashok K. Aggarwal and others reported in 2000 I LLJ 447. In this case the respondent No. 1 Mr. Ashok Aggarwal was employed as an Officer with the Bank of India since 1983. In September, 1989 he came on deputation to the appellant Bank from Bank of India. In July, 1993 the respondent No. 1 was offered appointment setting out the terms and conditions which was accepted by him. He resigned from Bank of India, and assumed charge of Chief Manager in Grade IV with appellant Bank. He resigned in September, 1995 and he was relieved from service by the appellant bank from 23rd September, 1995. The appellant Bank claimed that the respondent No. 1 was not eligible for grant of gratuity and to receive the contribution for provident fund because he had not completed the required number of continuous service. The High Court held that it was a case of continuity of service despite a fresh formal appointment letter having been issued. The High Court observed that from terms of appointment it could be seen that the respondent No. 1 was extended all benefits of his previous service with Bank of India commencing from 18th May, 1983 notwithstanding the appointment letter issued to him by the appellant bank. The High Court held that therefore the appellant Bank cannot now be permitted to deny the benefits to the respondent No. 1 on the ground that he did not complete the requisite number of years of service and was ineligible to the gratuity and provident fund. The above judgment of the Delhi High Court squarely applies to the present case. In the present case there is no evidence to show that fresh letter of appointment was issued to the workmen by the employer Municipal Council mentioning the terms and conditions on which they were employed in the council. The notification dated 20-5-1988 issued by the Government of Goa mentions that the workmen are re-employed with the employer Municipal Council on the same terms and conditions as were applicable to them prior to their transfer to the employer Municipal Council. The above notification itself shows that the workmen were not appointed freshly in the employer Municipal Council but their services were continued with the said council on the same earlier terms and conditions. Thus the workmen were extended all the benefits of their previous service with the respective Panchayats and as such it was a case of continuous service and hence the workmen are entitled to the consideration of their past service when they were working with the Panchayats.

13. Sec. 325(2) of the Municipalities Act, 1968 mentions various matters which can be provided for by the Government when a Municipal Area is created. It includes the transfer of assets, rights and liabilities of an existing local authority (including the rights and liabilities under any agreement or contract made by it) to any Successor local authorities or the Government and the terms and conditions of such transfer and the

continuance within the area of an existing local authority of all or any appointments, notifications, notices, taxes, orders, schemes, licenses, permissions, rules, bye-laws, regulations or forms made, issued, imposed or granted by or in respect of such existing local authority and in force within its area immediately before the specified day, until superseded or modified under the Act. Sub-Section (3) of Sec. 325 states that where an order is made under this section transferring the assets, rights and liabilities of an existing local authority, then, by virtue of that order, such assets, rights and liabilities of the existing local authority shall vest in and be the assets, rights and liabilities of the transferee. Exercising powers under Sec. 325(2) of the Municipalities Act the Government of Goa by Notification dated 20-5-1988 has ordered the transfer in whole of the assets, rights and liabilities of the Curchorem and Cacora Village Panchayats (including the rights and liabilities under any agreement or contract made by it) to the Curchorem-Cacora Municipal Council; the transfer of all the proceedings before the Village Panchayats of Curchorem and Cacora or any authority or officer subordinate to it to the Curchorem-Cacora Municipal Council; the re-employment of the employees of Village Panchayats of Curchorem and Cacora on the same terms and conditions as were applicable to them prior to their transfer to Curchorem-Cacora Municipal Council; the continuance of all or any appointments, notifications, notices, taxes, orders, schemes, licenses, permissions, rules, bye-laws, regulations, or forms made, issued, imposed or granted by the Village Panchayats of Curchorem and Cacora until such time they are superseded or modified under the Act; the continuance within the area of an existing local authority of all or any budget estimates, assessments, assessment lists, valuations, measurements or divisions made, or authenticated by or in respect of, such existing local authority and in force within its area immediately before the specified day, until superseded or modified under the relevant law.

14. The above facts show that all the functions, assets and employees of the Village Panchayats of Curchorem and Cacora were transferred to the employer Municipal Council. The Bombay High Court in the case of the Bombay Garage Ltd., v/s The Industrial Tribunal Bombay, reported in 1953 I LLJ 14 has held that where there is continuity of service a new employer is bound to take into account the services rendered by the workers to his predecessors in title and it was open to the respondent to award that, for the purpose of calculating gratuity, service rendered to the former employer should also be taken into account. The same principles would apply in the present case because in the present case also there was no termination of service of the workmen on creation of employer Municipal Council but their services were transferred and continued with the employer Municipal Council on same terms and conditions as applicable to them earlier. Therefore the workmen in the present case are entitled to taking into account the period of service

rendered by them in the Panchayats. Besides, the Union has produced the order dated 18-11-92 Exb. W-6 issued by the Valpoi Municipal Council. As per the said order the service rendered by the three employees in the Valpoi Panchayat prior to the formation of Valpoi Municipal Council was to be counted for the purpose of pensionary benefits. I therefore hold that the demand No.2 of the workmen in the present reference for considering their past service rendered by them in the respective Panchayats for the purpose of fixation of payscale, seniority, earned leave, sick leave, time bound promotional scale etc., in the event they are entitled to the same, is legal and justified and I further hold that the employer Municipal Council was not justified in refusing to concede to the said demand No. 2 of the union. I therefore answer the issue No. 1 and 2 accordingly.

15. Issue No. 3: During the pendency of the reference the union and the employer filed an application dated 14-1-2002 Exb. 15 stating that all the demands except the demand No. 2 have been settled. This being the case the dispute in respect of the demand Nos. 1 and 3 to 29 raised by the union does not survive. Therefore I have restricted my findings only to the demand No.2 raised by the union on behalf of the workers. While deciding the issue Nos. 1 and 2 it has been held by me that the demand No. 2 raised by the workmen is legal and justified. I therefore hold that the past service of the workmen rendered by them in their respective Panchayat, namely, Curchorem Village Panchayat and Cacora Village Panchayat, is liable to be considered for the purpose of fixation of pay scale, seniority, earned leave, sick leave, time bound promotion scale etc.

In the circumstances, I pass the following order.

#### ORDER

It is hereby held that the dispute in respect of the demand Nos. 1 and 3 to 29 raised by the Goa Municipal Workers' Union on behalf of the workmen against the Curchorem-Cacora Municipal Council does not survive in view of the settlement arrived at between them. It is hereby further held that the demand No. 2 raised by Goa Municipal Workers' Union on behalf of the workmen on the Curchorem-Cacora Municipal Council is legal and justified, and therefore the past service of the workmen rendered by them in their respective Panchayat, namely Curchorem Village Panchayat and Cacora Village Panchayat is liable to be considered for the purpose of fixation of payscale, seniority, earned leave, sick leave, time bound promotion scale etc.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),

Presiding Officer,  
Industrial Tribunal.

**Notification**

No. 28/1/2003-LAB-Part

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 14-11-2003 in reference No. IT/50/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 9th December, 2003.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/50/2003

Shri Kuber Naik,  
C/o. M/s Royal Tailor,  
Near Maruthi Temple,  
Mangor Hill,  
Vasco-da-Gama, Goa.

— Workman/Party I

V/s.

M/s. Priya Ship Repairs,  
11, Mascarenhas Bldg.,  
Opp. St. Andrew Church,  
Vasco-da-Gama, Goa.

— Employer/Party II

Workman/Party I - Absent.

Employer/Party II - Absent.

Panaji, dated: 14-11-2003.

**AWARD**

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 16-7-2003 bearing No. 28/30/2003-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Priya Ship Repair, Vasco-da-Gama, Goa in terminating the services of Shri Kuber Naik, Welder, with effect from 1-1-2002, is legal and justified?

If not, to what relief the workman is entitled to?"

2. On receipt of the reference a case was registered under No. IT/50/2003 and registered A/D notice was issued to the parties requiring them to appear before this Tribunal on 28-8-2003 at 10.30 a. m. the Employer-Party II (for short, "Employer") was duly served with the said notice but none appeared on behalf of the employer on the said date and thereafter. The Workman-Party I (for short, 'Workman') appeared in person and prayed for time to file claim statement. Hence the case was adjourned to 22-9-2003. However on the subsequent dates the workman did not appear. Hence no statement of claim came to be filed on behalf of the workman and the case was fixed for award.

3. The reference of the dispute was made by the Government at the instance of the workman since he challenged the action of the employer of terminating his services w.e.f. 1-1-2002. It is the workman who had raised the industrial dispute. The Bombay High Court, Panaji Bench, in the case of V. N. S. Eng. Services v/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol. 71 at page 393 has held that the obligation to lead the evidence to establish an allegation made by a party is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10-B of the Industrial Disputes Act which requires the party raising a dispute to file a statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove contention raised by him and Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i. e. in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

4. In the present case the dispute was raised by the workman as regards termination of his service by the employer which according to him is illegal and unjustified and since it was at his instance that the reference of the dispute was made by the Government, the burden was on the workman to prove that the action of the employer in terminating him from service was illegal and unjustified. The workman was given sufficient opportunity to appear before this Tribunal and file his statement of claim but the workman did not appear and consequently no statement of claim was filed on his behalf. There is no material before me to hold that the action of the employer in terminating the service of the workman is illegal and unjustified. I, therefore, hold that the workman has failed to prove that the action of the employer in terminating him from the service with effect from 1-1-2002 is not legal and justified. The reference has to be answered against the

workman holding his termination from service as legal and justified, and I hold so accordingly.

In the circumstances, I pass the following order.

#### Order

It is hereby held that the action of the management of M/s. Priya Ship Repair, Vasco-da-Gama, Goa, in terminating the services of the workman Shri Kuber Naik, welder, w. e. from 1-1-2002 is legal and justified. I further hold that Shri Kuber Naik is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.